IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7925 OF 2004

Harshada Harish Rasne ... Petitioner

V/s

Sou. Surekha Ganpat Mahadik & anr. ... Respondents

Mr. M.V. Limaye for the petitioner.

CORAM: P.V. KAKADE, J.

DATED: 7TH MARCH, 2006

P.C.:

1. Heard learned counsel for the petitioner. None appears for the respondent No.1. Name of the respondent No.2 is deleted vide order dated 13.12.2004.

2. The petition is aimed against the order passed by the Addl. District Judge, Kalyan, dated 13.7.2004 dismissing the appeal and confirming the order passed by the Trial Court decreeing the suit for eviction of the present petitioner from the suit premises.

3. The plaintiffs had filed the suit on the ground that he was tenant in the suit premises owned by one Nagada.

With the consent of the landlord, the plaintiffs gave the suit property on licence to the defendant. An agreement for a period of 11 months was initially entered into between the parties on 4.5.1983. Thereafter the agreement was renewed on 15.4.1984 and finally on 17.5.1985. After lapse of period mentioned in the licence i.e. on 16.3.1986, possession of the defendant is said to be unauthorized. The plaintiffs demanded vacant possession of the suit property.

The defendant challenged the suit on various ground and sought dismissal of the suit.

4. The Trial Court, on the basis of available evidence, came to the conclusion that the plaintiffs have proved that the defendant is occupying suit premises illegaly and, therefore, it was held that the plaintiffs were entitled to the relief of compensation.

The appeal was carried to the District Court. The learned Addl. District Judge, Kalyan, after hearing both parties confirmed the findings recorded by the Trial Court and dismissed the appeal holding that the defendant was not sub-tenant of the suit premises and his occupation was unlawful and, as such, the plaintiff

was held entitled to the decree of possession of the property. Hence the present petition.

5. At the outset, it may be noted that, both the Courts below have recorded concurrent findings to the effect that the plaintiffs have proved that the possession of the premises is held illegaly by the petitioner and, as such, the suit is liable to be effected. Perusal of the judgments of both the Courts below show that evidence on record was properly appreciated and findings recorded and reasoning adopted by both the Courts below appear to be just, legal and proper and, therefore, it would brook no interference by this Court in its jurisdiction under Art. 227 of the Constitution.

6. The learned counsel for the petitioner sought to raise certain aspects with regard to the maintainability of the suit. However, those aspects were not raised either at the trial stage nor in the lower appellate Court and, therefore, those cannot be argued for the first time in the writ petition and hence deserves no consideration at all.

7. Be that as it may, the fact remains that the entire evidence on record has satisfactorily shown that the

occupation of the present petitioner in the suit premises cannot be held to be legal and, as such, the concurrent findings recorded by both the Courts below have to prevail.

8. In the result, the petition stands dismissed with no order as to costs.

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